

**ANNUAL REPORT  
To the Commissioner  
Department of Environmental Protection  
July 1, 2003 -- June 30, 2004  
FY 2004**

**I. Introduction**

The Board of Underground Storage Tank Installers was established in 1985 by 32 MRSA Chapter 104-A and its authorities expanded and modified by subsequent amendments in 1987, 1989, 1990, 1992, 1997, 2001, and 2002. According to the statute, the purpose of the Board is as follows:

"In order to safeguard the public health, safety and welfare, to protect the public from incompetent and unauthorized persons, to ensure the highest degree of professional conduct on the part of underground oil storage tank installers and inspectors and to assure the availability of underground oil storage tank installations and inspections of high quality to persons in need of those services, it is the purpose of this chapter to provide for the regulation of persons offering underground oil storage tank installation and inspection services."

Thus, the Board has three major responsibilities: (1) certifying underground oil tank installers, underground gasoline tank removers, and underground oil storage tank inspectors; (2) managing and accrediting continuing education for certified underground tank installers, removers, and inspectors; and (3) taking disciplinary actions against installers, removers, and inspectors who violate its enabling statutes and rules. By law, the Board is also charged with submitting an annual report to the Commissioner of the Department of Environmental Protection (32 MRSA §10004(6)). This report is designed to fulfill that mandate for FY 2003/04. It covers the following major subject areas:

- Membership and Staffing;
- New Certifications and Testing;
- Recertification and Continuing Education;
- Processing of Complaints;
- Rulemaking and Program Development;
- Newsletter;
- Data Management; and
- Financial Statement

## II. Membership and Staffing

Members of the Board are as follows:

- Alison Smith, Chair (Public Member) - Term expires 12/31/2005.
- Paul Bosse, (Maine Oil Dealers' Association) - Term expires 12/31/2006 (second term).
- Clifford Buuck, (Public Member) - Term expires 12/31/2004.
- Kenneth Dixon (Maine Fire Chief's Association) – Term expires 12/31/2005.
- George Seel, (Department of Environmental Protection (DEP)) - Term expires 12/31/2005.<sup>1</sup>
- Lawrence Winchester, (Certified Installer) - Term expires 12/31/2004.
- (Vacant) (Me. Chamber of Commerce, Certified Installer, or Certified Inspector) - Term expires 12/31/2004.

Even though 2002 Legislation expanded the pool of individuals available for a seat traditionally held by the Maine Chamber of Commerce to also include another certified installer or a certified inspector, we continue to await an applicant for that seat.

James Hynson and Theresa Scott continued to provide staffing to the Board. Staff provided additional sporadic support from the Department of Environmental Protection, including Butch Bowie, Sara Brusila, Scott Farwell, Andrew Flint, Diana McLaughlin, Peter Moulton, Tim Rector, Raquel Ross, Ted Scharf, and Karen Schuler. Dennis Harnish provided support from the Office of the Attorney General.

## III. New Certifications and Testing

This section includes discussions on (A) number of installers and inspectors certified, (B) written and oral exams, (C) on-site exams, (D) upgrades, and (E) apprenticeships.

### A. Number of Installers and Inspectors Certified

The number of certified installers is 87 compared to 101 that were certified at the end of FY 2002/2003. At present, this includes 85 who hold Class 2 Oil Tank Installer Certificates, and two (2) Class 3 Oil Tank Installers. Fourteen (14) elected not to apply for recertification once their old certificates expired. No new installers became certified last year, although one applicant attempted and failed the final examination.

Maine currently has 22 certified underground tank inspectors. In addition to the five (5) underground tank inspectors that became certified last year, 17 qualified as inspectors this year. No inspector certificates have expired, and no inspectors have surrendered their certificate. There are no underground gasoline tank removers in Maine.

Based upon two (2) cycles of inspections required by statute, and the trend in application and certification of inspectors, an adequate number of inspectors to perform the required inspections will exist. However, the continuing decline in the number of installers raises concerns over the availability of qualified people to perform necessary service and repair on underground storage tank facilities and to begin the required facility replacements that will begin in a few years. The Board's reaction to this potential problem will be discussed in the "Program Development" section, below.

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<sup>1</sup> By statute, the representative from the Department of Environmental Protection has no limit on the number of terms they may serve.

## B. Written and Oral Exams

The Board offered three (3) written examinations and one oral examination<sup>2</sup> in FY 2003/04. Table 1 provides those results.

Examination	Inspector		Initial Installer		Class 2 Final		Total	
Date	Pass	Fail	Pass	Fail	Pass	Fail	Pass	Fail
July 25, 2003	5	8	2	0			7	8
November 5, 2003	2	6					2	6
April 30, 2004 <sup>3</sup>	10	9	4	0	0	1	14	10
<b>Total</b>	17	23	6	0	0	1	23	24

Table 1. Results of written and oral examinations offered by the Maine Board of Underground Storage Tank Installers, FY 2003/04.

Some effort was expended in revising and updating examinations to certify underground tank inspectors and installers during the last year. A contract was completed with Marcel Moreau Associates for the inspector examination, and its development was monitored closely by the Board. The specific work this year concentrated on (1) increasing the pool of questions from the exam originally offered last year, and (2) updating the examination to reflect amendments in DEP's underground tank regulations, effective March 14, 2004.

March 14, 2004 amendments to DEP underground tank regulations also generated needed changes to the installer's initial and final examinations. While updating the exams to reflect specific changes to the language in the regulations has occurred, addition related work will be required during the next year.

First, the new regulations provided updated references to newer additions of a variety of industry and national code documents used in the examinations. As a result, questions based on codes and recommendations from the Petroleum Equipment Institute (PEI), American Petroleum Institute (API), Steel Tank Institute (STI), and National Fire Protection Association (NFPA) need to be revisited to ensure they reflect the documents actually referenced in the rules.

Second, a variety of subjects that were addressed in the inspector examination need to be incorporated into the installer examinations. Specifically, a number of appurtenances of UST facilities were the subject of inspector examination questions that are also appropriate to the installer examination. In addition, the inspector examination addresses the issue of how Maine regulations evolved, not only what the current regulations require. Since new installers will also be able to conduct inspections on existing facilities installed under earlier versions of State regulations, they will also need to have a sense of the evolution of Maine's underground tank regulations.

Third, we feel it is wise to look at what subjects are addressed in which exams so we can better appropriately ask questions more relevant to what an applicant needs to know before entering apprenticeship versus at the end of their training. Finally, we feel applicants may be better served in their studying efforts by providing study questions (as opposed to the actual examination questions) in a short answer, rather than a multiple choice, format.

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<sup>2</sup> A request to provide an oral examination to an applicant claiming dyslexia was granted July 18, 2003. The examination was conducted with the assistance of DEP staff on April 29, 2004.

<sup>3</sup> These results incorporate one oral examination for underground tank inspector given April 29, 2004 and two instances of applicants retaking portions of the inspector examination due to administrative difficulties.

### C. On-Site Exams

No applicants were eligible for on-site examinations for the underground gasoline tank remover certificate, the only class that still requires on-site examination for certification.

### D. Upgrades

No Class 3 Underground Tank Installers attempted apprenticeship and testing requirements to be upgraded to Class 2 Underground Tank Installers in FY 2003/04. The Board's enabling legislation and rules provide for Class 3 installers to obtain upgrades to Class 2 if they apprentice on six (6) motor fuel installations and pass the Class 2 final examination.

### E. Apprenticeships

Two (2) apprentices for Class 3 certification who passed their initial exams in previous years continue to work to completing the six (6) installations required to qualify them to take the final examination. In addition, the six (6) individuals who passed the examination this year can complete their apprenticeships or undertake variance applications in order to receive full certification.

### F. Variances

The 1990 amendments to the Board's enabling legislation instituted a variance process for individuals to obtain variances for the apprenticeship portion of the installer certification process (32 MRSA §10010.3-A.D; 06-481 CMR c. 3 §4.D). During FY 2003/04, the Board received no variance applications.

## IV. Recertification and Continuing Education

Forty-seven (47) installers applied for recertification and were granted full renewal certificates. Four (4) others applied but lacked continuing education sufficient for recertification. All those agreed to six month probationary certificates in order to make up the continuing education they lack along with \$250 civil penalties.

Continuing education programs accredited by the Board in FY 2003/04 generally applicable to all installers are listed in Table 2. The Board approved a total of 47 credit hours from both program sponsor and individual installer applicants.

DEP and Board staff partnered to provide a single day workshop for certified installers, inspectors and interested parties on January 28, 2004. A total of 162 people attended this event. Based on survey results, the workshop appeared to be well received by the attendees.

## V. Processing of Complaints

Disciplinary actions involving five (5) investigations and five (5) alleged violations were processed and resolved in FY 2003/04. A summary of the Board's actions in these matters is presented in Table 3. Four investigations were dismissed and the other resolved by Consent Agreement.

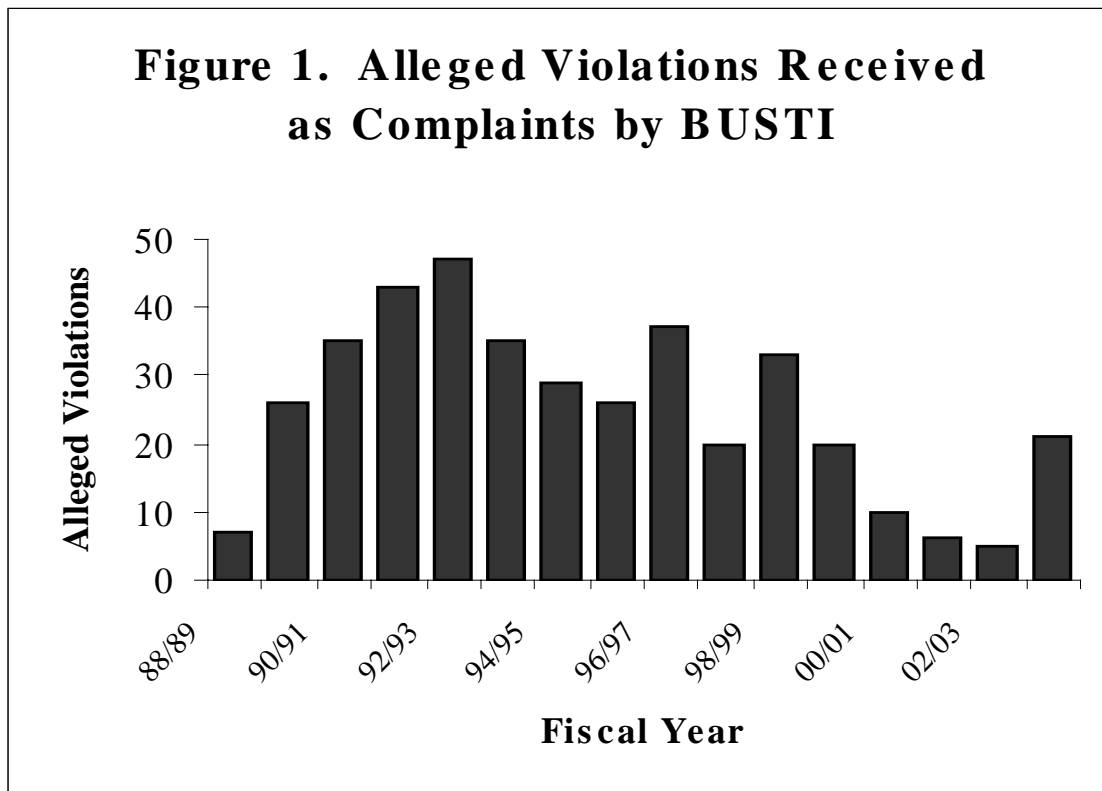
Seven (7) other investigations were initiated and remain unresolved during FY 2003/04 (Table 4). While Table 4 depicts seventeen (17) alleged violations involved, the actual number of alleged violations was much higher. Specifically, investigation 2004-01 involved allegation that one installer completed thirty-four (34) inspections while his/her certificate was suspended. For the purpose of reporting, that was listed as one case rather than 34 so as to not distort our reporting. Although the Board issued an order after a hearing in that case, the action remains unresolved because the installer is appealing the Board's action

to Administrative Court. We expect four (4) of the seven (7) investigations to be resolved in the very near future with Consent Agreements. The remaining two (2) have just been initiated and thus the investigations have not been completed.

PROGRAM	SPONSOR	DATE APPR.	HOURS
Proper Installation of Xerxes Fiberglass Tanks	Eastern States Associates Chuck Krouse	July 18, 2003	1
40-Hr. Hazardous Waste Operations	Deborah Roy/SafeTech	July 18, 2003	8
8-Hr. Hazardous Waste Oper.	Deborah Roy/SafeTech	July 18, 2003	2
8-Hr. Hazardous Waste Oper. (Supervisor)	Deborah Roy/SafeTech	July 18, 2003	2
Winter Installer & Inspector Training	James Hynson/BUSTI	November 21, 2003	4
API Operation Underground -Installation Segment	API/Angela Nelson	February 27, 2004	3
-Removal Segment			2

Table 2. Continuing education opportunities accredited by the Board of Underground Storage Tank Installers FY 2003/04.

Figure 1 shows the number of alleged violations investigated by the Board and its staff since promulgation of the Board's rules in August 1988. This graph indicates a sharp rise after a continuing decline in the number of complaints referred to the Board. Until last year, this probably relates to the overall decline in numbers of new installations. The increase this year is most directly related to a new state requirement for annual inspections of UST facilities beginning July 1, 2003.



Principle Violation	Year	No.	Date Received	Action Date	Result	Fine	Days Probation	Other	Date Closed
06-096 CMR691.5.D(8)	2004	5	5/10/2004	6/18/2004	Dismiss				6/18/2004
06-096 CMR691.5.D(8)	2004	5	5/10/2004	6/18/2004	Dismiss				6/18/2004
06-096CMR c. 691.5.D(13)(b)	2004	3	1/8/2004	2/27/2004	Dismiss				2/27/2004
06-481CMR1.4.B(1)	2004	4	1/16/2004	1/16/2004	CA	\$250	180	Ed.	4/16/2004
38MRSA563.9.1	2004	2	11/3/2003	3/19/2004	Dismiss				3/19/2004

Table 3. Summary of FY 2003/04 Enforcement Actions (By Violation) of the Maine Board of Underground Storage Tank Installers.

Principle Violation	Year	No.	Date Received	Date Sum.	Action Date	Board Action
06-096CMR691.5.D(6-8)	2004	1	7/7/2003	8/7/2003	11/21/2003	Order
06-096CMR691.5.D(13)(b)	2004	5	5/10/2004	6/10/2004	6/18/2004	CA
06-096CMR691.5.D(13)(b)	2004	5	5/10/2004	6/10/2004	6/18/2004	CA
06-096CMR691.5.D(13)(b)	2004	5	5/10/2004	6/10/2004	6/18/2004	CA
06-096CMR691.5.D(13)(b)	2004	5	5/10/2004	6/10/2004	6/18/2004	CA
06-096CMR691.5.D(13)(b)	2004	5	5/10/2004	6/10/2004	6/18/2004	CA
38MRSA563.1.A	2004	6	6/1/2004	7/8/2004		
06-096CMR691.5.B(6)(d)	2004	6	6/1/2004	7/8/2004		
06-096CMR691.5.B(5)(b)	2004	6	6/1/2004	7/8/2004		
06-096CMR691.5.B(3)	2004	6	6/1/2004	7/8/2004		
06-481CMR1.4.B(1)	2004	7	6/16/2004			CA
06-481CMR1.4.B(1)	2004	8	6/17/2004			CA
06-481CMR1.4.B(1)	2004	9	6/18/2004			CA
38MRSA§564(1)	2004	10	6/22/2004			
06-096CMR c. 691.5.B(2)	2004	10	6/22/2004			
38MRSA§564(1)	2004	10	6/22/2004			
06-096CMR c. 691.5.B(2)	2004	10	6/22/2004			

Table 4. Unresolved complaint resolution activities of the Board of Underground Storage Tank Installers at the end of FY 2003/04.

## VI. Program Development and Rulemaking

In a letter dated February 10, 2004, the Legislature's Joint Standing Committee on Natural Resources completed a review of the Board of Underground Storage Tank Installers under the Government Evaluation Act (3 M.R.S.A. Chapter 35). Their complete report is provided as Appendix A. The Committee found the following:

“The Joint Standing Committee on Natural Resources unanimously finds that the Board of Underground Storage Tank Installers is operating within its statutory authority. In addition, the Committee commends the Board for its ongoing commitment to providing this necessary service.”

As noted previously, the Board is concerned that the declining number of installers may soon result in a shortage of qualified people to perform repairs and retrofits to our now aging underground storage tank

population. In addition, the Board wonders that when mandatory replacement requirements begin to occur in the not to distant future, whether sufficient numbers of installers will be available to meet the demand.

Based on opinions gathered informally from the regulated community, the primary deterrent to people becoming certified as installers is the requirement for six (6) underground storage tank installations during apprenticeship. That requirement was instituted prior to Maine's deadline for removal or replacement of non-compliant facilities, when good opportunity existed for applicants to participate in entire installations. Since that deadline passed, opportunities to assist on full installations significantly declined, and thus the ability of applicants to complete their apprenticeships has been compromised.

Since the installation requirement is statutory (32 MRSA §10010, §§3-A), a legislative change would be required to adjust apprenticeship requirements. If the Board finds amendment is warranted, it will pursue the necessary amendment.

No new rulemaking or program development was conducted in FY 2003/04.

## VII. Newsletter

One of the initial benefits of certification of installers was the development of ability by the State to communicate with installers via a newsletter. Three (3) issues of "The Maine Installer" were published during FY 2003/04. The newsletter appears to be well received whenever it can be published.

## VIII. Data Management

A database has been generated by a contractor which is installed as a part of the Department's overall database for underground tank registration. Currently, it contains identification and address information for all installers and a mechanism to chart certification history. We also requested the contractor to develop portions on continuing education and enforcement. Board staff are continuing to verify the information in the system and test it for proper operation.

A home page on the Internet which includes the Board's application forms, a list of certified individuals, a description of the Board's program, and past newsletters, meeting minutes, and approved continuing education is completed and undergoing ongoing maintenance.

## IX. Financial Statement

The Board's financial statement for FY 2003/04 is provided in Table 5. Income shown for recertification varies widely on a biennial basis. Recertification is required every two (2) years, and thus income for this year reflects the vast majority of tank installers becoming recertified this year. It is therefore expected that this figure will follow two (2) year cycles of being high and low, with this year a high year. Shortfalls in BUSTI budgeting are made up from the other income sources in the State's Groundwater Oil Cleanup Fund.

Respectfully Submitted,

Alison Smith, Chair

<b>Income</b>	<b>(\$)</b>
Program Income	18,345.00
Groundwater Oil Cleanup Fund	147943.82
<b>Total</b>	<b>166,288.82</b>
<b>Expenses:</b>	
Personal Services	87,956.57
Fringe	37,263.71
Longevity/Overtime	3,061.92
Other	<u>38,006.62</u>
<b>Total</b>	<b>166,288.82</b>

Table 5. Financial statement for the Board of Underground Tank Installers, July 1, 2003 through June 30, 2004.



# Appendix A

Government Evaluation Review Report  
Maine Board of Underground Storage Tank Installers

From the

Joint Standing Committee on Natural Resources  
Maine State Legislature